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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

5670-26

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on March 13, 2006Signature Typed or printed name Carey Gregory

Application Number

09/966,006

Filed

09/28/2001

First Named Inventor

David J. Lineman

Art Unit

2131

Examiner

Christopher A. Revak

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ attorney or agent of record.
Registration number 36,811
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____


Signature

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March 13, 2006

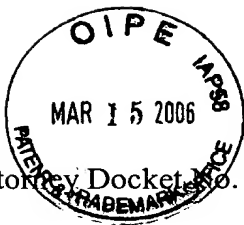
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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

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Attorney Docket No. 5670-26

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Lineman et al
Serial No.: 09/966,006
Filed: September 28, 2001
For: METHOD AND APPARATUS FOR ACTIVELY MANAGING SECURITY
POLICIES FOR USERS AND COMPUTERS IN A NETWORK

Group Art Unit: 2131

Confirmation No. 4813

Examiner: Christopher A. Revak

Date: March 13, 2006

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPELLANTS' PRE-APPEAL
BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set out in the OG of July 12, 2005 for the New Appeal Brief Conference Pilot Program, which has since been extended.

No fee or extension of time is believed due for this request. However, if any fee or extension of time for this request is required, Appellants request that this be considered a petition therefor. The Commissioner is hereby authorized to charge any additional fee, which may be required, or credit any refund, to our Deposit Account No. 50-0220.

REMARKS

Appellants hereby request a Pre-Appeal Brief Review (hereinafter "Request") of the claims finally rejected in the Final Office Action mailed December 13, 2005 ("Final Action"). The Request is provided herewith in accordance with the rules set out in the OG dated July 12, 2005.

Claims 1-56 are pending in this application. Claims 1-56 stand rejected under 35 U.S.C. § 102(e) as anticipated by United States Patent No. 6,735,701 to Jacobson ("Jacobson"). Final Action, p. 3. Appellants respectfully submit that the rejected claims are allowable as the reference cited does not disclose all of the recitations of the independent

claims, either expressly or inherently. Therefore, Appellants respectfully request review of the present application by an appeal conference prior to the filing of an appeal brief. In the interest of brevity and without waiving the right to argue additional grounds should this Petition be denied, Appellants will focus on only the independent claims herein.

Under 35 U.S.C. § 102, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131 (quoting *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987)). "The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" M.P.E.P. § 2112 (citations omitted) (emphasis added).

Independent Claim 1 recites:

A method for managing a security policy for one or more users in a network, comprising:

a) running a policy management program on a computer in communication with the network;

b) enabling creation of a security policy document in a portable representation language using the policy management program, including selection and inclusion in the security policy document of a plurality of data elements for communicating the security policy to the one or more users and of at least one data element for implementing the security policy on computer systems in the network;

c) enabling the one or more users on the network to view the security policy document using the plurality of data elements for communicating the security policy to the one or more users included in the security policy document;
and

d) receiving electronic data relevant to user viewing of the security policy document using the policy management program. (emphasis added)

Appellants submit that at least the highlighted recitations are clearly not disclosed by Jacobson and the pending rejections are based on a clear error of fact in alleging Jacobson discloses all these recitations.

In rejecting independent Claim 1, the Final Action cites to portions of columns 2, 10, 11 and 19 of Jacobson. Final Action, p. 4. However, the only portion of Jacobson added responsive to the amendments to Claim 1 to add the highlighted portions of Claim 1 are at column 19, lines 19-32. Furthermore, in response to Appellants arguments regarding patentability of Claim 1, the Response to Arguments section of the Final Action states that the policy document, the data elements for communicating the security policy **and** at least one data element for implementing the security policy on a computer are taught by the excerpt at column 19, lines 19-32. The paragraph including this excerpt, in its entirety, reads as follows:

Software resources include software listings and updates, guidelines for proper use including email etiquette, and netiquette training, Internet information and personal safety training, optional registration of an encryption private or public key with the system, a listing of the organization's approved and licensed software, software downloading guidelines and approved procedures, tech support for user's questions Registering newly downloaded software to the system, management approved trialware, shareware and others for review by the organization, operations and support information, regulation, policy, and Freedom of Information Act materials, information explaining how the system works including product support and services, telephony, text-based support, and in-house support options, a simple do & don't security module for non technical activity, and online safety information. (Jacobson, Col. 19, lines 17-32.)

Even assuming the presentation of access to information on security policies is disclosed by this excerpt, there is no disclosure or even a suggestion of distinct data elements for implementing the security policy on a computer. As described, for example, at paragraph 47 of the present specification, these data elements, for example, contain "the platform controls that link the written security policy to the mechanism for communicating the security policy to the computer systems 26 on the various platforms" and "the technical controls that link the written security policy to the mechanism for enforcing the security policy on the computer systems." Such data elements are not disclosed or even suggested by the excerpt relied on from Jacobson.

In addition, while an HTML type provision of information to remote locations executing on browser is inferred in Jacobson, it does not follow that the HTML would disclose or suggest the "security policy document" of Claim 1. Instead, it merely indicates that screen display information, that may include information related to a "policy" may be

provided to remote locations in an HTML form. The "policy training module" and other modules of Jacobson are not described as creating a specific "security policy **document**" that contains such HTML form information. Instead, such displays may be standard page or frame displays saved on a system, text information stored in a database or the like and extracted by the policy training module and/or various known other ways to create HTML pages and the like.

Furthermore, the Final Action appears to not even distinguish between the recited policy management **program** and the recited policy **document** of Claim 1 in applying Jacobson. The "network security policies stored in the database" of Jacobson, while arguably a document, are not even alleged in the Office Action as disclosing the particulars of "a security policy document" as recited in Claim 1. Neither does Jacobson appear to discuss "enabling creation" of such stored policies by the described policy compliance monitor 110 or effectiveness module 120 (shown as coupled to the policy repository 125 of Figure 1 of Jacobson).

Independent Claim 11 recites technical controls "for implementing the security policy on at least one first computer." In rejecting Claim 11, the Final Action asserts that these recitations are disclosed by Jacobson, Col. 2, lines 3-18, Col. 10, line 57 to Col. 11, lines 3 and Col. 6, lines 47-57. However, at most these sections refer to "compliance actions" that may include "implementing a different security policy." However, as stated in these sections of Jacobson, a "security policy" is identified as "a set of rules designed to limit an organization's risk and liability." Implementing is described in Jacobson as training users on policy and, more particularly, using that training as a way to develop policies. See, Jacobson, Col. 5, lines 36-50. Thus, Appellants' submit that the portions of Jacobson relied on in rejecting Claim 11 (and Claim 1), while they recite "implementing a different security policy," do not disclose or even suggest creation of a security policy **document** including at least one **data element** for implementing the security policy on **computer systems**. Instead, they, at most, suggest changing rules for **users** and training **users** on those new rules to encourage compliance by increased user appreciation of the "organization's risk and liability."

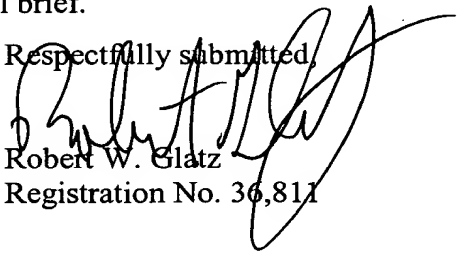
Independent Claim 26, like Claim 1, recites a distinct program and "security policy document." Claim 26 also recites configuring the security policy document to create both "a

human-readable security policy document" and a "machine-readable security policy document containing technical controls readable by" a computer. In rejecting Claim 26, the Final Action relies on the same excerpts of Jacobson as reproduced above that were used in rejecting Claim 11. For reasons similar to those discussed with reference to Claim 11, Appellants submit that the cited excerpts of Jacobson do not include an anticipatory disclosure of such particular recitations of inclusion of human and machine information in a security policy document to provide security policy management "for one or more **users** and one or more first **computers** in a network" as recited in Claim 26 (emphasis added).

Independent Claim 51, like Claim 1, recites a security policy document and separate program. In addition, Claim 51 includes human-readable and machine-readable format recitations similar to Claim 26.

For at least the reasons discussed above, Appellants submit that the anticipation rejections of independent Claims 1, 11, 26 and 51, and the claims that depend, are clearly erroneous and should be withdrawn. Therefore, Appellants respectfully request that the present application be reviewed and the rejections of Claims 1-51 be reversed by the appeal conference prior to the filing of an appeal brief.

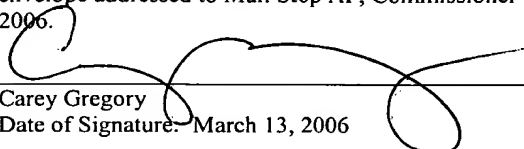
Respectfully submitted,


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, PO Box 1450, Alexandria, VA, 22313-1450, on March 13, 2006.


Carey Gregory
Date of Signature: March 13, 2006